

electoral behavior of those voters within a particular jurisdiction," he said.

Critics on the U.S. Commission on Civil Rights are not so sure. "The Voting Rights Act is supposed to protect against situations when black voters are locked out because of racism," said Abigail Thernstrom, a Republican appointee to the U.S. Commission on Civil Rights. "There is no entitlement to elect a candidate they prefer on the assumption that all black voters prefer Democratic candidates."

Located about 60 miles from the Atlantic Coast in eastern North Carolina, Kinston has a history of defying governmental authority. During Colonial times, the fledgling city was known as Kingston—named for King George III—but residents dropped the "g" from the city's name after the American Revolution.

In Kinston's heyday of manufacturing and tobacco farming, it was a bustling collection of shops, movie theaters and restaurants. Now, many of those buildings are vacant—a few have been filled by storefront churches—and residents are left hoping for better days.

In November's election—one in which "hope" emerged as a central theme—the city had uncommonly high voter turnout, with more than 11,000 of the city's 15,000 voters casting ballots. Kinston's blacks voted in greater numbers than whites.

Whites typically cast the majority of votes in Kinston's general elections. Kinston residents contributed to Barack Obama's victory as America's first black president and voted by a margin of nearly 2-to-1 to eliminate partisan elections in the city.

The measure appeared to have broad support among both white and black voters, as it won a majority in seven of the city's nine black-majority voting precincts and both of its white-majority precincts.

But before nonpartisan elections could be implemented, the city had to get approval from the Justice Department.

Kinston is one of the areas subject to provisions of the landmark 1965 Voting Rights Act, which requires the city to receive Justice Department approval before making any changes to voting procedures. Kinston is one of 12,000 voting districts in areas of 16 states, almost exclusively in the South, that the Voting Rights Act declared to have had a history of racial discrimination.

In a letter dated Aug. 17, the city received the Justice Department's answer: Elections must remain partisan because the change's "effect will be strictly racial."

"Removing the partisan cue in municipal election will, in all likelihood, eliminate the single factor that allows black candidates to be elected to office," Loretta King, who (at the time) was the acting head of the Justice Department's civil rights division, wrote in a letter to the city.

Ms. King wrote that voters in Kinston vote more along racial than party lines and without the potential for voting a straight Democratic ticket, "the limited remaining support from white voters for a black Democratic candidate will diminish even more."

Ms. King is the same official who put a stop to the New Black Panther Party case. In that case, the Justice Department filed a civil complaint in Philadelphia after two members of the black revolutionary group dressed in quasi-military garb stood outside a polling place on election day last year and purportedly intimidated voters with racial insults, slurs and a nightstick.

After a judge ordered default judgments against the Panthers, who refused to answer the charges or appear in court, the Justice Department dropped the charges against all but one of the defendants, saying "the facts and the law did not support pursuing" them.

Ms. King's letter in the Kinston case states that because of the low turnout black voters

must be "viewed as a minority for analytical purposes," and that "minority turnout is relevant" to determining whether the Justice Department should be allowed a change to election protocol.

Black voters account for 9,702 of the city's 15,402 registered voters but typically don't vote at the rates whites do.

As a result of the low turnout, Ms. King wrote, "black voters have had limited success in electing candidates of choice during recent municipal elections."

"It is the partisan makeup of the general electorate that results in enough white cross-over to allow the black community to elect a candidate of choice," she wrote.

Mrs. Thernstrom of the civil rights commission blasted the department's interpretation of the law.

"The Voting Rights Act is not supposed to be compensating for failure of show up on Election Day," she said. "The Voting Rights Act doesn't guarantee an opportunity to elect a 'candidate of choice.' . . . My 'candidate of choice' loses all the time in an election."

When asked whether Justice had ever "either granted or denied" requests either "to stop partisan elections or implement partisan elections," Mr. Miyar, the department spokesman, said it was impossible to retrieve past decisions on that basis.

But he did provide, based on the recollection of a department lawyer, a single precedent—a decision during the Clinton administration denying a bid from a South Carolina school district to drop partisan elections.

That decision employs similar reasoning and language as the Kinston ruling: "Implementation of nonpartisan elections . . . appears likely to deprive black supported candidates of meaningful partisan-based support and to exacerbate racial polarization between black and white voters."

But the 1994 decision doesn't mention the necessity of the Democratic Party and doesn't mention low turnout among black voters in that school district as a factor affecting their ability to elect candidates they prefer.

Kinston City Council member Joseph Tyson, a Democrat who favors partisan elections, said nothing is stopping black voters in Kinston from going to the polls.

"Unfortunately, I'm very disappointed with the apathy that we have in Kinston among the Afro-American voters," he said.

Mr. Tyson, who is one of two black members of the six-member City Council, said the best way to help black voters in Kinston is to change the council's structure from city-wide voting to representation by district. Kinston voters currently cast as many votes in the at-large races as there are council seats up for election—typically three, or two and the mayor.

"Whether it's partisan or nonpartisan is not a big issue to me, whether or not the city is totally represented is what the issue is to me," he said. "If you have wards and districts, then I feel the total city will be represented."

Partisan local elections are a rarity in North Carolina. According to statistics kept by the University of North Carolina School of Government in Chapel Hill, only nine of the state's 551 cities and towns hold partisan elections.

The City Council could take the Justice Department to court to fight decision regarding nonpartisan elections, but such a move seems unlikely. The council voted 4-1 to drop the issue after meeting privately with Justice Department officials in August.

"What do I plan to do? Absolutely, nothing," Mr. Tyson said. "And I will fight, within Robert's Rules of Order, wherever necessary to make sure that decision stands."

The Justice ruling and Kinston's decision not to fight it comes in the wake of a key Voting Rights Act case last year. In that decision, the Supreme Court let a small utility district in Texas seek an exemption from the law's requirements to receive Justice Department approval before making any changes to voting procedures. But the court declined to address whether the law itself is constitutional.

Critics of the law argue it has changed little since its 1965 inception and that the same places the law covered then no longer need Justice Department approval to make changes to voting procedures.

Proponents, including Attorney General Eric H. Holder Jr., said the law is still necessary to ensure equal voting rights for all Americans.

In Kinston, William Barker is the only City Council member who voted to continue discussing whether to challenge the Justice Department's ruling.

He said he voted against eliminating partisan elections because the proposed new system would declare a winner simply on who received a plurality of votes instead requiring candidates to reach certain threshold of votes based on turnout.

"Based on the fact that the voters voted overwhelmingly for it, I would like to see us challenge it based on that fact. My fight is solely based on fighting what the voters voted on," he said. "It bothers me, even though I'm on the winning side now, that you have a small group, an outside group coming in and saying, 'Your vote doesn't matter.'"

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CARTER (at the request of Mr. BOEHNER) for today on account of illness.

Mr. SHADEGG (at the request of Mr. BOEHNER) for today and the balance of the week on account of a death in the family.

Mr. WALDEN (at the request of Mr. BOEHNER) for today on account of illness.

Mr. YOUNG of Alaska (at the request of Mr. BOEHNER) for today and the balance of the week on account of attending a memorial service in Alaska for his late wife.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. QUIGLEY) to revise and extend their remarks and include extraneous material:)

Ms. WOOLSEY, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. MURPHY of Connecticut, for 5 minutes, today.

Mr. STUPAK, for 5 minutes, today.

Mr. GRAYSON, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

(The following Members (at the request of Mr. JONES) to revise and extend their remarks and include extraneous material:)

Mr. POE of Texas, for 5 minutes, October 23, 26 and 27.